

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**JUL 31 2006**  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 5684  
DATE COMPLAINT FILED: November 3, 2005  
DATE OF NOTIFICATION: November 9, 2005  
DATE OF LAST RESPONSE: January 24, 2006  
DATE ACTIVATED: January 23, 2006

EXPIRATION OF SOL: July 20, 2009

**COMPLAINANT:**

National Legal and Policy Center

**RESPONDENTS:**

Sean Combs

Citizen Change

Bad Boy Worldwide Entertainment Group

Kerry-Edwards 2004, Inc. and David Thorne, in his  
official capacity as treasurer

**RELEVANT STATUTES AND  
REGULATIONS:**

2 U.S.C. § 441b

11 C.F.R. § 114.4

11 C.F.R. § 109.21

2 U.S.C. § 434(f)

11 C.F.R. § 100.29

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter involves allegations that Citizen Change, a non-profit 501(c)(3) tax-exempt organization established by recording artist Sean "Puffy" or "P. Diddy" Combs, violated the Federal Election Campaign Act of 1971 ("the Act" and "FECA") in connection with a

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1 purportedly non-partisan Get Out the Vote ("GOTV") campaign during the 2004 presidential  
2 election. Specifically, the Complaint contends that Citizen Change violated the Act by: (1)  
3 making impermissible corporate expenditures prohibited by 2 U.S.C. § 441(b); (2) making  
4 impermissible in-kind contributions by coordinating its GOTV activities with the campaign of  
5 Democratic presidential candidate John Kerry; and (3) failing to disclose or report its receipts or  
6 expenditures made in connection with alleged partisan electioneering activities.<sup>1</sup> Bad Boy  
7 Worldwide Entertainment Group ("BBWEG") is a for-profit corporation controlled by  
8 Mr. Combs that apparently shared office space with Citizen Change. The Complaint generally  
9 alleges that BBWEG may have underwritten some of Citizen Changes' political activities.

10 In denying the allegations in the Complaint, Citizen Change submitted a detailed  
11 Response with 25 exhibits, including documents that illustrate how it was founded and operated  
12 by Mr. Combs, including copies of talking points and speeches used for public appearances and  
13 rallies, as well as instructions and scripts provided to celebrity participants. Kerry-Edwards  
14 2004, Inc. and David Thorne, in his official capacity as treasurer ("Kerry-Edwards"), also deny  
15 the allegations set forth in the Complaint and argue that their actions did not violate the Act.  
16 Moreover, as discussed below, the information provided by Respondents and the available public  
17 record support a recommendation that there is no reason to believe that any of the Respondents  
18 violated the Act in this matter.

## 19 II. BACKGROUND

20 Citizen Change was founded on May 14, 2004. According to its press release, Citizen  
21 Change aimed to "educate, motivate, and empower more that 40 million youth and minority

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<sup>1</sup> The Complaint also questions the legal status of Citizen Change. Specifically, the Complaint avers that, despite its claim to be a properly registered 501(c)(3) organization, Citizen Change is not a bona fide 501(c)(3). These allegations are outside the Commission's jurisdiction and not addressed in this Report.

1 voters" through the medium of television, radio and print media, and to inspire youth and  
2 minorities to get involved with the political process by making voting "hot" and fashionable.<sup>2</sup>  
3 Citizen Change Response at 4-5, Exhibits A & D. Citizen Change contends that it was  
4 established principally as "a complex, multi-pronged media campaign that leveraged all the same  
5 cutting-edge marketing techniques that helped catapult Mr. Combs into his status as a successful  
6 hip-hop artist, producer and businessman" to mobilize youth and minority voters to register and  
7 participate in the 2004 presidential election. Citizen Change Response at 4, Exhibits D & E.

8 From May to November 2004, Citizen Change sponsored a broad mass media campaign  
9 to encourage minorities and youth to register to vote using a wide range of broadcast media  
10 capabilities. Specifically, Combs and his celebrity associates made public appearances on MTV  
11 and BET television stations, in public service announcements, on over 62 radio stations, in print  
12 media, celebrity photographs, T-shirt messages, advertising, billboards, and websites. The  
13 promotion also included appearances at voter registration events and rallies sponsored by  
14 volunteer organizations and local disc jockeys, and culminated in a three-day, six-city "Vote or  
15 Die" tour in the final days before the election. *Id.* at 4-5.<sup>3</sup>

16 All of Citizen Change's public statements emphasized the non-partisan nature of its  
17 GOTV efforts. Letters to celebrity participants, talking points for sponsors and endorsers, and  
18 press kits distributed by Citizen Change reiterated the point that its goal was to motivate voters,  
19 not to support a particular party or candidate. *Id.* Citizen Change produced two documentaries  
20 for MTV and BET, which included interviews of members of both parties and segments from  
21 both parties' conventions. *Id.* at 7-8.

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<sup>2</sup> See July 20, 2004 press release officially launching Citizen Change's efforts publicly.

<sup>3</sup> Citizen Change's 2004 federal income tax return states that the organization received \$2,231,846 in cash and in-kind donations from eight individual contributors. Citizen Change Response at 18, Exhibit J.

1           **III.    FACTUAL AND LEGAL ANALYSIS**

2                   **A.    Corporate Expenditures**

3           Complainant asserts that despite its claim to be a non-partisan, non-profit organization,  
4   Citizen Change made prohibited corporate expenditures for partisan communications on behalf  
5   of the Kerry-Edwards campaign. Complaint at 2. Complainant supports this allegation with two  
6   contentions. First, it points out an anti-Bush statement made by Combs several months prior to  
7   the founding of Citizen Change.<sup>4</sup> Then, Complainant points to news reports that celebrity  
8   participants made anti-Bush statements at two "Vote or Die" rallies in the days before the  
9   election.<sup>5</sup> These incidents are the only support Complainant provides to bolster its allegation that  
10   Citizen Change made impermissible corporate expenditures in violation of 2 U.S.C. § 441b.

11           As discussed in more detail below, Citizen Change conducted a media campaign aimed at  
12   voter registration and mobilization that included clear and consistent statements as to its non-  
13   partisan motivation and goals. Citizen Change Response at 13-14. While the Act prohibits  
14   corporations from making contributions or expenditures in connection with any election, the  
15   Commission's regulations permit corporations to make disbursements for non-partisan GOTV  
16   efforts.<sup>6</sup> See 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.2 and 114.4(c)(2).

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<sup>4</sup> In a February 9, 2004 Rolling Stone magazine article, Combs reportedly proclaimed, "We're going to get Bush's ass out of that office." *Id.*

<sup>5</sup> At an October 27, 2004 rally in Detroit, Michigan, actor Leonardo DiCaprio and Detroit Mayor Kwame Kilpatrick reportedly expressed a preference for John Kerry to be elected president. At an October 29, 2004 rally held on the campus of Temple University, singer Mary J. Blige reportedly criticized President Bush's international and domestic policies. *Id.* at 4.

<sup>6</sup> A contribution is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election." 2 U.S.C. § 431(8)(A)(i). An expenditure includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). The Commission's regulations define "anything of value" to include "in-kind contributions" such as the "provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services." 11 C.F.R. § 100.52(d)(1). This includes the use of facilities, equipment, supplies and personnel. *Id.*

1 All of the press releases and public statements issued by Citizen Change encouraged  
2 voter participation without expressly advocating the election of any particular federal candidate.  
3 Further, none of the communications by Citizen Change promoted, attacked, supported or  
4 opposed any particular candidate or party.<sup>7</sup> Instead, Citizen Change expressed the opinion that  
5 both parties had ignored the youth and minority constituencies and encouraged these groups to  
6 register and participate in the election in order to get politicians to pay attention to issues of  
7 import to them. *See* Citizen Change Response at Exhibits A, B, C, E, N & O.

8 Citizen Change assembled a "Coalition of the Willing" to promote its voter mobilization  
9 effort using celebrities from both parties. In addition to celebrities known to support Democrats,  
10 this "Coalition" included well-known Republicans such as California Governor Arnold  
11 Schwarzenegger, Jessica Simpson and Kid Rock, as well as Jerry Pierce Santos of the  
12 Republican Diversity Committee and Maryland Lieutenant Governor Michael Steele. Citizen  
13 Change Response, Exhibit B. Citizen Change explicitly instructed each celebrity that joined its  
14 "Coalition of the Willing" of its non-partisan mission and gave them talking points and/or  
15 prepared speeches, which emphasized the non-partisan message of the events it sponsored. *Id.* at  
16 Exhibits G & M.

17 Citizen Change concluded its campaign with a three-day, six-city "Vote or Die" tour,  
18 complete with full press corps. Complainant alleges that certain participants in the "Vote or Die"  
19 rallies expressly advocated the election of John Kerry and/or the defeat of President George W.

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<sup>7</sup> Citizen Change's primary spokesperson, Combs, regularly and repeatedly stated in public appearances that the goal of Citizen Change was simply to encourage voter registration and mobilization among youth and minorities. Citizen Change asserts that Combs never expressed a preference for a particular party or candidate when acting as spokesperson, and was equally critical of both political parties in his public statements.

1 Bush.<sup>8</sup> Citizen Change argues that the comments made at its rallies by Mayor Kilpatrick, actor  
2 Leonardo DiCaprio and singer Mary J. Blige were merely their own personal opinions and do not  
3 constitute "express advocacy" on the part of Citizen Change. Citizen Change Response at 22.  
4 Citizen Change emphasizes that by making such statements, these three individuals ignored the  
5 explicit instructions in talking points that they had received from Citizen Change to keep their  
6 comments non-partisan. *Id.* at 20-21.

7 The newspaper article regarding Detroit Mayor Kilpatrick's comments supporting John  
8 Kerry states, "[Mayor] Kilpatrick admitted that the event was supposed to be non-partisan, but he  
9 voiced his opinion, saying, 'It's my mic and it's my town. I'm going to say what I want.'"

10 Complaint, Exhibit F. The newspaper article describing a rally noted that,

11 Combs, head of Citizen Change maintained a neutral partisan stance throughout  
12 his portion of the three-hour program. In his press conference, Combs attributed  
13 the partisan outbursts to the fact that "young people have a lot of emotion." "This  
14 is a non-partisan effort," he said, "I'm not campaigning for Kerry...I am  
15 campaigning for the people."

16  
17 Complaint, Exhibit G.

18 The facts support the conclusion that Citizen Change conducted a non-partisan voter  
19 drive. Accordingly, this Office recommends that the Commission find no reason to believe that  
20 Citizen Change, Sean Combs or Bad Boy Worldwide Entertainment Group violated 2 U.S.C.  
21 § 441(b).

22 **B. Alleged Coordination with Kerry-Edwards 2004, Inc.**

23 The Complaint speculates that prohibited in-kind contributions may have occurred as a  
24 result of possible coordination between Citizen Change and the Kerry-Edwards campaign.

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<sup>8</sup> The fact that Complainant asserts that the audiences at these college campus rallies might have had political leanings that were pro-Democratic Party is not dispositive of the issue of whether Citizen Change sponsored a partisan event, as the audience's views cannot automatically be ascribed to Citizen Change merely by association.

1 Complaint at 6. *See* 2 U.S.C. § 441b; 11 C.F.R. § 109.21. Complainant asserts that two  
2 participants in the Citizen Change GOTV effort had ties to the Kerry campaign. James Carville,  
3 who once served as a close advisor to former President Bill Clinton, is alleged to have provided  
4 political advice to Combs. Complaint, Exhibits O & P. Additionally, actor Leonardo DiCaprio,  
5 is alleged to have participated in a university panel discussing President Bush's environmental  
6 record on behalf of the Kerry-Edwards campaign and in a voicemail campaign where he  
7 encouraged people to vote for Democrats. Complaint, Exhibits Q and R.

8 A communication is "coordinated" with a candidate, an authorized committee, or agent  
9 thereof if it meets a three-part test: (1) payment by a third party; (2) satisfaction of one of four  
10 "content" standards;<sup>9</sup> and (3) satisfaction of one of five "conduct" standards.<sup>10</sup> 11 C.F.R.  
11 §109.21. For the reasons set forth below, this Office recommends that the Commission find no  
12 reason to believe that there was any violation of the Act as a result of coordination.

13 Claimant's allegations of coordination with the Kerry-Edwards campaign appear to be  
14 nothing more than speculation. The media campaign sponsored by Citizen Change consisted of  
15 events that were separate and apart from the activities undertaken by Kerry-Edwards. Kerry-  
16 Edwards was not a co-sponsor of any of the rallies at issue. Kerry-Edwards campaign materials  
17 were not distributed at these events, nor did they use any Kerry-Edwards campaign slogans or

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<sup>9</sup> The "content" standards include: (1) an "electioneering communication"; (2) a "public communication" that disseminates campaign materials prepared by a candidate; (3) a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; and (4) certain "public communications," distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party). 11 C.F.R. § 109.21(c).

<sup>10</sup> The conduct standards include: (1) communications made at the "request or suggestion" of the relevant candidate or committee or at the suggestion of the person paying for the communication and the relevant candidate or committee assents to the suggestion; (2) communications made with the "material involvement" of the relevant candidate or committee; (3) communications made after "substantial discussion" with the relevant candidate or committee; (4) specific actions of a "common vendor"; and (5) specific actions of a "former employee." 11 C.F.R. § 109.21(d)(1)-(5). *See also* 11 C.F.R. § 109.21(d)(6).

1 talking points. In addition, there was no sharing of staff, resources, vendors, venues or message  
2 between Citizen Change and Kerry-Edwards. The specific message promoted by Citizen Change  
3 was that neither political party had been or would be responsive to the needs of minority and  
4 young voters unless those voters established that they were a worthy constituency by registering  
5 and voting in the 2004 election.

6 Citizen Change's message was consistently non-partisan and its communications do not  
7 meet the "content" standard of the three-part test. Citizen Change's broad mass media campaign  
8 encouraged minorities and youth to register to vote using a wide range of broadcast media  
9 capabilities, including voter registration events and rallies using celebrities, volunteers and local  
10 radio disc jockeys, and a three-day, six-city "Vote or Die" tour. The group repeatedly stated that  
11 voter participation was the paramount goal and that he was concerned about whether either party  
12 was paying attention to the issues relevant to young and minority voters.

13 As previously discussed, the basis for Claimant's allegations of partisanship orientation  
14 are media accounts of opinions expressed by celebrity participants in rallies co-sponsored by  
15 Citizen Change and student-led college organizations. The public message of Citizen Change  
16 and the co-sponsors of the "Vote or Die" rallies was always that the events were non-partisan.  
17 All promotions and disseminated materials, including talking points and prepared speeches, were  
18 prepared by Citizen Change or the co-sponsoring student group and emphasized the event's non-  
19 partisan message. Accordingly, the available information indicates that Citizen Change's  
20 communications do not meet the "content" standard for a finding of coordination. 11 C.F.R.  
21 § 109.21(c).

22 Additionally, the Complaint offers nothing more than speculation and conjecture as to the  
23 "conduct" standard of the three-part test for coordination. Both Citizen Change and Kerry-



1 Edwards unequivocally deny that the celebrity statements made at the rallies supporting Kerry or  
2 criticizing Bush were made at the "request or suggestion" or with the "material involvement" of  
3 the Kerry-Edwards campaign or any third party on its behalf. 11 C.F.R. § 109.21(d)(1)-(2).  
4 Citizen Change and Kerry-Edwards further deny that Citizen Change had any substantial  
5 discussion or communication with the Kerry-Edwards campaign or sharing any common  
6 vendors. 11 C.F.R. § 109.21(d)(3)-(5).

7 The only two individuals that Complainant claims were associated in any way with both  
8 Citizen Change and the Kerry-Edwards campaign are political consultant James Carville and  
9 actor Leonardo DiCaprio. However, the relationships that Carville and DiCaprio had with  
10 Citizen Change were quite limited. Carville's role with Citizen Change was limited to his  
11 attendance at a press conference at which he did not speak (on behalf of Citizen Change or  
12 anyone else). Citizen Change Response at 23. Carville apparently played no further role in  
13 developing the message or conducting the activities of Citizen Change, and was never a paid  
14 employee, consultant or advisor. Similarly, Mr. DiCaprio's role in Citizen Change's activities  
15 appear to have been limited to his appearances at three rallies sponsored by Citizen Change, for  
16 which he received no compensation. *Id.* at 24.

17 Accordingly, this Office recommends that the Commission find no reason to believe that  
18 Citizen Change and Sean Combs violated 2 U.S.C. § 441b by making prohibited in-kind  
19 contributions to Kerry-Edwards Inc. Further, this Office recommends that the Commission find  
20 no reason to believe that Kerry-Edwards Inc. and David Thorne, in his official capacity as  
21 treasurer, violated 2 U.S.C. § 441b by accepting prohibited in-kind contributions.

**C. Electioneering Communications**

Complainant alleges that the partisan statements uttered at the "Vote or Die" rallies are evidence of electioneering communications, which Citizen Change failed to disclose. The Act requires every person who makes a disbursement for the direct costs of producing and airing electioneering communications in excess of \$10,000 to disclose said disbursements to the Commission. 2 U.S.C. § 434(f). An "electioneering communication" is a "broadcast, cable or satellite communication that: (1) [r]efers to a clearly identified candidate for Federal office; (2) is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election...; and (3) is targeted to the relevant electorate." 2 U.S.C. § 434(f)(3); 11 C.F.R. § 100.29.

The available facts indicate the GOTV media campaign conducted apart from the rallies did not promote, support, attack or oppose a clearly identified federal candidate. 2 U.S.C. § 434(f)(3). Even assuming the comments made by celebrity guests Mayor Kilpatrick, Leonardo DiCaprio and Mary J. Blige could be attributed to Citizen Change, these statements do not constitute electioneering communications under the statute. *See* 2 U.S.C. § 434(f)(3). The statements were not "broadcast, cable or satellite communications" publicly distributed by a television, radio station, cable system, or satellite system, but were excited utterances made at a rally of a few hundred students.<sup>11</sup> 2 U.S.C. § 434(f)(3)(A)(i); 11 C.F.R. § 100.29(b). Additionally, the statements did not "target the relevant electorate," as required by the Act.

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<sup>11</sup> "Publicly distributed" means that communications are "aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system or satellite system." 11 C.F.R. § 100.29(3)(i). In the case of a candidate for nomination for President or Vice President, "publicly distributed" also requires that the broadcast communication "can be received by 50,000 or more persons." 11 C.F.R. § 100.29(b)(3)(ii).

1 Instead, they could only have been heard by the rally attendees, which numbered in the hundreds,  
2 and not the 50,000 or more set forth in the regulations. 2 U.S.C. § 434(f)(3)(C).

3 Because Citizen Change's media campaign did not mention federal candidates and  
4 because its "Vote or Die" rallies did not constitute electioneering communications, as set forth in  
5 2 U.S.C. § 434(f) and 11 C.F.R. § 100.29, this Office recommends that the Commission find no  
6 reason to believe that Citizen Change violated 2 U.S.C. § 434(f).

7 **IV. RECOMMENDATIONS**

- 8 1. Find No Reason To Believe that Citizen Change, Sean Combs or Bad Boy  
9 Worldwide Entertainment Group violated 2 U.S.C. § 441b;  
10 2. Find No Reason To Believe that Kerry-Edwards 2004, Inc. and David Thorne, in  
11 his official capacity as treasurer, violated 2 U.S.C. § 441b;  
12 3. Find No Reason To Believe that Citizen Change violated 2 U.S.C. § 434(f);  
13 4. Approve the appropriate letters; and  
14 5. Close the File.

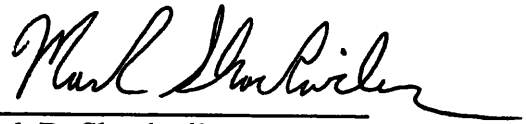
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